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CITATIONS

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Universal Military Training and Service Act, 62 Stat. 604, Section 6(j) 2

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 267

THOMAS WALTER POMORSKI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 7-9) is reported at 222 F. 2d 106. The opinion of the district court (R. 42-51) is reported at 125 F. Supp. 68.

JURISDICTION

The judgment of the Court of Appeals was entered on April 28, 1955 (Pet. 10). A petition for rehearing was denied July 15, 1955 (Pet. 11). The petition for a writ of certiorari was filed July 26,

1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, under Section 6(j) of the Universal Military Training and Service Act, a conscientious objector could validly be assigned to perform civilian work at a state hospital.

STATEMENT

The case presents the same issues as those which are raised by the petitioners in No. 266, this Term, who were assigned to state institutions, and which were raised in the petition for certiorari to review the judgment of the Court of Appeals for the Ninth Circuit in *Niles* v. *United States,* 220 F. 2d 278, certiorari denied, 349 U.S. 939.

Like the petitioners in those cases, petitioner here was classified I-O, i.e., conscientious objector (R. 55). He failed to submit to the local board a statement as to the type of civilian work he wished to perform and failed to make a choice among three specific employments in hospitals offered to him (R. 57). At a meeting with the local board, petitioner stated that he would not accept an assignment because he would not be free to resign (R. 60-62). Thereafter he was ordered to report for employment at the Northville State Hospital in Michigan (R. 70), but failed to do so (R. 71).

He was convicted of willfully refusing to report for civilian work and was sentenced to imprisonment for five years (R. 72-73). On appeal, the judgment was affirmed (Pet. 10).

ARGUMENT

Petitioner's attack on the validity of his assignment to a state hospital is discussed in the government's brief in opposition in No. 266, this Term and was discussed in the brief in opposition in the *Niles* case, No. 719, O.T. 1954.

The only additional point which petitioner raises (Pet. 4-5) relates to his misinterpretation of the opinion below as it dealt with the constitutionality of the statute as interpreted by the regulation. The court said (Pet. 8-9):

> It is not the Constitutional but Congressional policy which relieves the conscientious objector from the duty of bearing arms. * * * The appellant, at his own request, was so classified as to be accorded the privilege of civilian work in lieu of the duty to enter the Armed Forces. There can be no Constitutional challenge of the validity of an Act which gave appellant conditional exemption from a service which he could Constitutionally be compelled to perform.

This is manifestly not a holding that petitioner is estopped to challenge the constitutionality of the act and regulations because he requested that he be classified as a conscientious objector. The court was pointing out, in response to the contention that the Act as interpreted violated the Fifth and Thirteenth Amendments, that Congress, as a matter of grace and not of right, gave special privileges to conscientious objectors, and that, since the condi-

tion it attached to such privilege was a reasonable one, the condition did not violate the Amendments.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST, 1955.

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